

**RULES
OF
THE TENNESSEE BOARD OF PAROLES**

**CHAPTER 1100-1-1
CONDUCT OF BOARD OF PAROLES PROCEEDINGS**

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11—1—1—.01 SHORT TITLE.

- (1) These rules shall be known and may be cited as the "Rules and Regulations of the Tennessee Board of Paroles."

Authority: T.C.A. §40—28—104. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.02 STATEMENTS OF INTENT.

- (1) It was the intent of the General Assembly in creating the Tennessee Board of Paroles that it be autonomous and in all respects functionally and administratively separate from any other state agency.
- (2) Responsive to requirements of Tennessee law, the Board recognizes that parole is a privilege and not a right that no inmate may be released on parole merely as a reward for good conduct or efficient performance of duties assigned in prison.
- (3) Although eligibility for parole is set by statute, whether an inmate is actually released on parole is discretionary with the Board.
- (4) To avoid even the appearance of impropriety, all decisions of the Board regarding policy, procedures, rules shall be determined by a majority vote of the members of the Board. Votes taken shall be public.

Authority: T.C.A. §40—28—103, 40—28—104, 40—28—105, 40—28—115, 40—28—117, 40—35—501. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.03 DEFINITIONS. As used in these rules, unless the context otherwise requires:

- (1) "Board" means the Tennessee Board of Paroles or a member thereof.
- (2) "Chairman" means the Board member appointed by the governor for a two (2) year term to direct the operations of the Board and to fulfill the functions established by law for such position.

(Rule 1100—1—1—.03, continued)

- (3) "Executive Director" means the person appointed by the Board to serve as chief administrative officer of the agency.
- (4) "Director" means the Director of Paroles Field Services employed by the Board to perform the duties established by law for such position.
- (5) "Hearing Officer" means any employee, other than the parole officer responsible for supervising the parolee in question, appointed by the Chairman to conduct parole hearings.
- (6) "Parole Officer" means an employee who supervises and investigates the conduct, behavior, and progress of parolees assigned to such person.
- (7) "Declaration of Delinquency" means a declaration made by the Director of Parole Field Services, which prevents a parolee's sentence from continuing to expire when such parolee is alleged to be in violation of the conditions of his/her parole.
- (8) "Detainer" means a document issued or made by a competent officer, authorizing the keeper of a prison, workhouse or jail to keep in his custody the person named in the document.
- (9) "Executive Clemency" means broadly an act of leniency or an instance of mercy, which may be exercised by the Governor in all criminal cases after conviction, except in cases of impeachment. Included within the Governor's clemency power are:
 - (a) "Commutation" means a discretionary act of the Governor, which reduces a prisoner's sentence from a greater to a lesser degree with the extent of such reduction being totally within the discretion of the Governor.
 - (b) "Conditional Pardon" means a pardon granted upon such conditions and with such restrictions and limitations as the Governor deems proper.
 - (c) "Pardon" means a discretionary act of the Governor which forgives the defendant or extinguishes his crime thereby granting such defendant full relief from all or any portion of his sentence remaining at the time of pardon.
 - (d) "Reprieve" or "Respite" means a discretionary act of the governor which withholds a sentence from an interval of time or a sentence of death for a stated specific period of time, thus having the effect of suspending the execution of the sentence for the duration of the reprieve or respite.
 - (e) "Exoneration" means the discretionary act of the Governor of abolishing a conviction and restoring all rights of a person based upon innocence in the case at issue under T.C.A. §40—27—109.
- (10) "Mandatory Parole" means a parole which the Board is required to grant to certain inmates who have never been paroled granted parole of any type prior to the expiration of their sentence. All sex offenders must meet the requirements of T.C.A. §40—28—116 before release on mandatory parole.
- (11) "Parole" means the release of an inmate to the community by the Board prior to the expiration of his/her term, subject to conditions imposed by the Board and subject to its supervision, or where a court or other authority has issued a warrant against the resident and the Board, in its discretion, releases him to answer the warrant of such court or authority.

(Rule 1100—1—1—.03, continued)

- (12) "Parole Rescission" means the procedure by which the Board may terminate an inmate's grant of parole, either before or after such inmate is actually released on parole, due to conduct, violations or omissions committed by such inmate prior to his/her release, pertinent information not available at the time of the hearing, or a change in parole eligibility.
- (13) "Parole Revocation" means the formal procedure by which the Board may terminate or revoke a parolee's release on parole for conduct or omissions which violate the conditions of such resident's parole after his/her release.
- (14) "Preliminary Hearing" means the initial hearing conducted by a hearing officer to determine whether probable cause exists to believe a parolee has violated the conditions of his parole in an important respect.
- (15) "Inmate" means a felony offender who is in the custody of the Tennessee Department of Correction or a jail or workhouse.
- (16) "Parolee" means an ex-inmate who has been placed on parole.

Authority: T.C.A. §§40—27—101, 40—27—102, 40—27—104, 40—27—109, 40—28—102 through 40—28—105, 40—28—111, 40—28—117, 40—28—121 and 40—28—122. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.04 ADMINISTRATION.

- (1) Board Structure
 - (a) Composition of the Board shall be as provided by law. The appointment of members of the Board, the selection of its Chairman, and the quorum requirements shall be those specified by law. (T.C.A. Title 40, Chapter 28).
 - (b) These regulations are promulgated under the authority of T.C.A. §40—28—101 and in accordance with the Uniform Administration Procedures Act. (T.C.A. Title 4, Chapter 5).
 - (c) The Board shall keep or cause to be kept appropriate records of all of its official actions. Such records shall be made accessible to the public and interested parties in accordance with law and these rules and regulations.

Authority: T.C.A. §§40—28—103 through 40—28—105, 40—28—107 and 40—28—119. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.05 GENERAL BOARD POLICY.

- (1) Board Hearings and Meetings
 - (a) Meetings and hearings of the Board are open to the news media and the public.
 - (b) Although Board meetings and hearings are open to the public, the Board reserves the right to make such internal adjustments, rules and regulations as are necessary to insure that the proceedings remain orderly at all times and that each resident receives an objective and fair hearing.

(Rule 1100—1—1—.05, continued)

- (c) In order to encourage active participation by all interested parties, the Board will conduct its proceedings in as informal a manner as is consistent with the due process rights of the inmates.
 - (d) While the hearings will be informal and open, the security regulations of the penal institutions and the basic rights of the residents will be respected. The Board will discuss confidential information within the guidelines of these regulations.
- (2) Information concerning the Board.
 - (a) The Board shall maintain and will disseminate written information concerning its organization, functions, policies, procedures, rules, regulations and parole criteria to any party requesting such information.
 - (b) The Board will make every effort to fully inform inmates of its functions, policies, procedures, rules, regulations and criteria, and will answer questions in response to written correspondence.
 - (c) The Board will conduct hearings concerning matters of parole, and parole violations and executive clemency. The times, locations, and dockets of such hearings will be announced to the appropriate institutional and parole staff, to the inmate or parolee, and to the judges and district attorneys general of the county from which the resident or parolee was sentenced, as required by statute.
 - (d) Subject to applicable provisions of law, it is the sole duty of the Board to determine which inmates serving a sentence in state prisons, county workhouses and jails may be released on parole and when and under what conditions.

Authority: T.C.A. §§40—28—104, 40—28—105 and 40—28—118. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.06 BOARD CRITERIA FOR GRANTING OR DENYING PAROLE.

- (1) Before granting or denying parole, the Board may apply the following factors to each eligible inmate to assist it in determining whether such inmate will live and remain at liberty without violating the law or the conditions of his/her parole:
 - (a) The nature of the crime and its severity;
 - (b) The inmate's previous criminal record, if any;
 - (c) The inmate's institutional record;
 - (d) The views of the appropriate trial judge and the district attorney general who prosecuted the case;
 - (e) The inmate's circumstances if returned to the community;
 - (f) Any mitigating or aggravating circumstances surrounding the offense;
 - (g) The views of the community, victims of the crime or their family, institutional staff, parole officers, or other interested parties.

(Rule 1100—1—1—.06, continued)

- (h) The inmate's training, including vocational and educational achievements and other training received both before and after incarceration;
 - (i) The inmate's employment history, his/her occupational skills, including any military experience, and the stability of his/her past employment;
 - (j) The inmate's past use of narcotics, or past habitual and excessive use of alcohol;
 - (k) The inmate's behavior and attitude during any previous experience on probation or parole and the recency of such experience;
 - (l) An objective advisory parole predication guideline system to adequately assess the risk an inmate poses to society and his/her potential for parole success;
 - (m) Any other factors required by law to be considered or the Board determines to be relevant.
- (2) In applying the above factors to a particular resident, the Board will consider the following sources of information:
- (a) Reports prepared by institutional staff relative to the inmate's social history and institutional record, including any recommendations the institutional staff may wish to make;
 - (b) All relevant Department of Correction or other prison, jail or workhouse reports;
 - (c) Observations concerning the suitability of releasing the inmate on parole from court officials, law enforcement officials and other interested community members;
 - (d) Reports or recommendations resulting from any physical, psychological or psychiatric examination or evaluations of the inmate;
 - (e) Any relevant information submitted by the inmate, his/her attorney, representatives on his behalf, or other interested persons;
 - (f) The parole plan which the inmate intends to develop and follow; and
 - (h) Any other relevant information concerning the inmate.
- (3) After applying the various factors for consideration to the individual inmate, the Board may deny the inmate's release on parole if, by majority vote, it determines that:
- (a) There is a substantial indication that the resident will not conform to the conditions of his parole;
 - (b) Release at that time would depreciate the seriousness of the crime of which the person stands convicted or promote disrespect for the law;
 - (c) Release at this time would have adverse effect on institutional discipline;
 - (d) The person's continued correctional treatment, medical care or vocational or other training in the institution will substantially enhance the person's capacity to lead a law-abiding life when given release at a later time; or

(Rule 1100—1—1—.06, continued)

- (e) Such other factors as the Board may, in its discretion, determine useful and relevant.
- (4) The Board may revise or modify its parole criteria and factors for consideration as it deems appropriate.

Authority: T.C.A. §§40—28—104, 40—28—106 and 40—35—503. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.07 THE PAROLE HEARING PROCESS.

- (1) Parole Eligibility.
 - (a) Although the decision to release an inmate on parole is discretionary with the Board, parole eligibility is, by law, based upon the completion of a statutorily specified portion of a sentence, less any applicable credits.
 - (b) At least four (4) months prior to an inmate's parole eligibility date, the Department of Correction, shall notify the Board of the name and location of inmates who are eligible for parole.
 - (c) The Board's staff shall then compile and distribute dockets or lists of the cases to be heard by the Board.
 - (d) Subject to later alteration the Board's schedule of dates and locations of hearings shall be available two (2) months in advance, and the specific lists of cases to be considered shall be available two (2) weeks in advance.
- (2) The Parole Hearing.
 - (a) The eligible inmate may appear personally before the Board, or a hearing officer on his/her hearing date. If an inmate is not available to appear before the Board on his/her scheduled date for reasons such as court appearance, escape from custody, institution transfer or illness, then such inmate may be deferred until such time as he/she can be present. In addition, the Board is empowered to employ hearing officers to see inmates for any matter concerning a parole. The hearing officer's recommendations are advisory only and the Board shall accept, modify or reject any recommendation made by a hearing officer.
 - (b) If the Board determines that it does not have necessary reports or sufficient information before it upon which to base an objective decision in a particular case, it may continue such hearing to a later date. The Board may also continue a hearing to await the disposition of untried indictments or disciplinary proceedings or to investigate the status of an outstanding detainer. Such continued hearings will subsequently be continued as scheduled unless new commitments or the loss of good and honor time credits, alters the inmate's parole eligibility dates.
 - (c) Any eligible inmate may request that his/her scheduled parole grant hearing be deferred until a later specific month or year by signing a waiver to that effect, witnessed by correction or parole personnel. The Board or designated hearing panel thereof, may accept or reject the waiver and agree to defer the case or proceed to conduct the hearing.

(Rule 1100—1—1—.07, continued)

(3) Findings and Notice of Decision.

- (a) Although the Board, or designated hearing panel thereof, may deliberate in the inmate's presence, individual notes of the Board or panel members shall remain confidential.
- (b) The Board shall inform the eligible inmate of its decision and reasons for the decision as soon as it is made.
- (c) An inmate whose parole has been revoked, rescinded or denied may request an appellate review by the Board. Requests for an appellate review must be received by the Board within twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not received within twenty-one (21) days, it will be denied. The request will be screened by a board member or designee to decide if a review will be conducted. Reviews will be conducted for the following reasons:
 - 1. If there is significant new evidence that was not available at the time of the hearing.
 - 2. If there are allegations of misconduct by the hearing official that are substantiated by the record.
 - 3. If there were significant procedural errors by the hearing official.
- (d) All requests which will receive further consideration must be based on one or more of the above reasons. Requests based on the availability of new evidence or information must be accompanied by adequate documentation. Requests based on allegations of misconduct or significant procedural errors must clearly indicate the specific misconduct or procedural error(s).
- (e) If the case is set for review, it will be conducted from the record of the first hearing and the appearance of the inmate will not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. A summary of the hearing will be prepared and the board will vote after reviewing the summary and the record of the first hearing. A decision to change the result of the hearing that is the subject of the appeal will require the concurrence of three (3) board members. The decision rendered after an appellate review is final.
- (f) No person shall be paroled, nor shall the parole of any person be denied, or rescinded without the concurrence of three (3) board members.
- (g) The reasons why a particular inmate is denied release on parole shall be furnished in written form to such inmate.
- (h) As soon as practicable after the Board's action, it shall cause to be forwarded to the appropriate standing committee of the general assembly a written list of the names of all inmates released on parole.

Authority: T.C.A. §§40—28—104 through 40—25—107, 40—28—115, 40—28—119, 40—35—501. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.08 RELEASE ON PAROLE DATE.

- (1) Effective Date.
 - (a) A grant of parole shall not be deemed to be effective until a certificate of parole has been delivered to the inmate, such inmate has voluntarily signed the certificate and the effective date has been reached.
 - (b) When an effective date of parole has been established by the Board, release on such date shall be conditioned upon the continued good conduct of the inmate and the completion of a satisfactory release plan for parole supervision.
 - (c) The Board may, on its own motion, reconsider any parole grant case prior to the release of the resident and may reopen and advance or delay a parole date.

Authority: T.C.A. §§40—28—104 and 40—28—117. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.09 PAROLE AND DETAINER.

- (1) The presence of a detainer shall not in and of itself constitute a valid reason for the denial of parole. It is recognized that where the inmate appears to be a good parole risk, there may be distinct advantages to the granting of parole despite the presence of a detainer.
- (2) Parole to Detainers.
 - (a) As used in this rule, unless the context otherwise requires, 'parole to a detainer' means release of the inmate to the physical custody of the authority who has lodged the detainer.
 - (b) Where the detainer is not lifted, the Board may grant parole to such detainer if the inmate is otherwise considered to be a good parole risk.
 - (c) When a detainer is outstanding against an inmate whom the Board wishes to parole, the Board shall order a release to "detainer or approved program."
 - (d) The Tennessee Parole Board will cooperate in establishing and maintaining arrangements for concurrent supervision with other jurisdictions where such arrangements are feasible and where release on parole appears to the Board to be justified.

Authority: T.C.A. §§40—28—104 and 40—28—401. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.10 PSYCHOLOGICAL AND PSYCHIATRIC REPORTS TO THE BOARD.

- (1) Whenever an inmate is scheduled for a hearing before the Board in accordance with these rules, and reasonable doubt exists as to mental competency or there exists a possibility of mental illness, the hearing shall be continued to a later date and the Board shall authorize that a psychological exam be performed on such inmate and that the results be transmitted to the Board.
- (2) An inmate convicted of a sex crime shall not be paroled until evaluated as required by law.

(Rule 1100—1—1—.10, continued)

Authority: T.C.A. §§40—28—104, 40—28—116 and 40—35—503. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.11 RESCISSION OF PAROLE.

- (1) Pre-parole Rescission Procedure.
 - (a) If an inmate has been granted parole and has subsequently been charged with institutional misconduct, escape, or has been served with a warrant or received a new felony sentence or had the certification of parole eligibility withdrawn by the Department of Correction or has other changes in circumstances sufficient to become a matter of record, the Board shall be promptly notified and advised of such new circumstances.
 - (b) No inmate about whom notification has been made pursuant to subparagraph (a) of this subsection shall be released on parole until such time as the institution has been properly informed that no change has been made in the Board's order to parole.
 - (c) Upon receiving notification as required by subparagraph (a) of this subsection, the Board shall schedule a parole rescission hearing or notify the institution that the grant of parole remains.
- (2) The Pre-parole Rescission Procedure.
 - (a) The rescission hearing shall be scheduled, if possible, for the next docket of parole hearings at the institution where the inmate is being held.
 - (b) The inmate shall be given adequate notice of the reason(s) such rescission hearing is being conducted.
 - (c) The purpose of the rescission hearing shall be to determine if the inmate's misconduct or other change in circumstances is sufficient to warrant rescission of such inmate's parole grant.
 - (d) The inmate may present documentary evidence and witnesses may appear in his/her behalf at the rescission hearing.
 - (e) The Board may delay the parole grant for up to one hundred and twenty (120) days if, in its opinion, it has insufficient information before it to reach an informed and fair decision at the rescission hearing. Awaiting the disposition of institution discipline committees, new charges or indictments, or investigating new detainees shall also be sufficient grounds to continue a rescission hearing under this subparagraph.
 - (f) A hearing conducted by an institution discipline committee of the appropriate institution which results in a finding that the inmate has violated the rules of his/her confinement may be relied upon by the Board as sufficient evidence of institutional misconduct.
 - (g) If an inmate's parole grant is rescinded, he shall be furnished a written statement of the findings and reasons for the Board's actions.
 - (h) A grant of parole shall not be rescinded except upon the concurrence of three (3) board members.

(Rule 1100—1—1—.11, continued)

(3) Post Parole Grant Rescission Procedure.

- (a) If, after a parole has become effective and the inmate is released on parole, evidence comes to the attention of the Board that significant information was fraudulently given or withheld by the inmate, or on behalf of the inmate, to that the inmate violated the law while on any furlough or other release program prior to being released on parole and such information was not known by the Board or that the parolee has been arrested, indicted or convicted for an offense that was committed prior to parole or that the parolee has an unexpired prison term of which the Board was unaware at the time of the hearing or that a calculation of the parolee's sentence structure would render him/her ineligible for parole, the Director may issue a warrant for the retaking of such parolee.
- (b) Upon the execution of the warrant, the resident shall be notified of the reasons for the post parole grant rescission hearing.
- (c) At such rescission hearing, the Board may declare that the grant of parole is void and the inmate shall thereupon resume his/her sentence in custody, or the Board may declare that grant of parole void, but decide to re-parole on both the old and new cases if eligibility has been certified by the Department of Correction or the Board may decide to leave the subject on parole.

(4) Appeal Procedure.

- (a) An inmate whose parole has been rescinded may request an appellate review by the Board. Such review shall be in accordance with the procedure outlined in rule 1100—1—1—.07(c), (d) and (e).

Authority: T.C.A. §§40—28—104 and 40—28—105. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.12 DISCHARGE OF PAROLE.

- (1) Whenever the Board is satisfied that a parolee has complied with the conditions of his/her parole in a satisfactory manner, the Board shall cause to be issued to such parolee a certificate of final discharge. Final discharge from parole will be granted only after a parolee has reached the expiration date of his/her sentence(s). This is in no way to be construed as permitting a discharge from parole for parolees with a life sentence.

Authority: T.C.A. §§40—28—104 and 40—28—125. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.13 REVOCATON OF PAROLE.

(1) Revocation Report to Director

- (a) If the parole officer having charge of a parolee has reasonable cause to believe that the parolee has violated one (1) or more conditions of his/her parole in an important respect, such officer shall present such evidence to the Director.

(Rule 1100—1—1—.13, continued)

- (b) This report shall be in written form and shall contain a listing of the violations alleged and the facts and circumstances surrounding each violation.
- (2) Issuance and Execution of Warrant.
 - (a) Upon receipt of a parole officer's report alleging violation of parole, the Director may in his discretion, issue a warrant for the retaking of such parolee and his return to a correctional institution in the State of Tennessee, if he determines parole has been violated in an important respect.
 - (b) Any officer authorized to serve criminal process, or any peace officer to whom such warrant is delivered shall execute the warrant by taking the parolee into custody.
 - (c) If the parolee is in custody at the time of the parole violation warrant, a parole officer may serve and execute the warrant.
- (3) Warrant Placed as a Detainer.
 - (a) In those cases where the parolee is confined in another state pending new criminal charges, or is serving a new sentence in another state, the warrant may be placed there as a detainer.
 - (b) If it becomes apparent that the Board cannot obtain physical custody of the parolee detained in another state, the Director shall withdraw the warrant and issue a letter of notification in compliance with subparagraph (c) of this subsection.
 - (c) The letter of notification referred to in subparagraph (b) shall consist of a letter sent to the custodian of the parolee being held in another jurisdiction and shall inform such custodian that the named individual is an alleged parole violator in the State of Tennessee.
 - (d) Such letter shall request that the out-of-state custodian inform the Tennessee Director of the release of the named parolee at least ninety (90) days prior to such release. The letter shall also inform the custodian that it is in no way to be construed as prohibiting the parolee's participation in any treatment or rehabilitative program which the custodian desires to implement on behalf of the parolee.
 - (e) Upon receipt of notification by the custodian that a parolee will be released, the Director shall reissue the warrant so that the parolee may be returned to Tennessee by execution of such warrant unless parole has expired.
 - (f) In all cases where a parolee is returned to the custody of Tennessee authorities following his/her confinement by an out-of-state custodian, such parolee shall be afforded prompt parole revocation proceedings in accordance with these rules.
 - (g) Nothing in this rule shall be construed to prevent the Director from issuing a letter of notification to the custodian of the parolee in the first instance in lieu of placing a warrant as a detainer.
- (4) Parole Revocation, Preliminary Notice.
 - (a) Upon the execution of a warrant issued by the Director, the parolee shall be given adequate notice of the preliminary hearing or a revocation hearing if the hearing official holds such a hearing within fourteen (14) days of the service of the warrant.

(Rule 1100—1—1—.13, continued)

- (b) The notice shall state the time and place of the hearing and shall inform the parolee that at the hearing he/she will be given an opportunity to present witnesses and documentary evidence in his/her own behalf and shall be allowed to cross-examine any adverse witnesses in attendance.
- (5) The Preliminary Hearing.
 - (a) Unless waived in writing pursuant to subparagraph (c) of this subsection or a revocation hearing is held within fourteen (14) days of the service of the warrant, the parolee shall be afforded a preliminary hearing.
 - (b) The preliminary hearing shall be conducted as scheduled unless the parolee voluntarily waived such hearing in writing. For such a waiver to be effective, it must contain the following:
 - 1. A clear statement that the parolee is entitled to a preliminary parole revocation hearing; and
 - 2. A clear statement that the parolee has the right to present letters, documents, and individual testimony which may give relevant information to the presiding hearing officer.
 - (c) If the parolee expresses his/her desire to waive such hearing, a parole officer shall explain the contents of the waiver to the parolee and shall not accept such waiver unless he/she is reasonably certain that the parolee fully understands the contents and consequences of such a waiver and that the parolee knowingly and voluntarily still desires to waive such hearing.
 - (d) Upon obtaining a valid waiver in accordance with these rules, the parole officer shall forward the waiver for inclusion in violation materials and a final revocation will be scheduled. A parolee may withdraw a preliminary hearing waiver at any time prior to a final revocation hearing.
 - (e) If a preliminary hearing is held and the hearing officer is of the opinion that the parolee is incapable of speaking effectively for himself/herself, the hearing officer shall continue the hearing and notify the Board of need for representation. Upon such notification, the Board may either accept or reject the hearing officer's recommendation that the parolee be appointed counsel. Unless such recommendation is rejected by the Board, counsel will be appointed for the parolee.
 - (f) Every parolee shall be informed that he/she may request that counsel be appointed to represent him/her. If the parolee has made such a request, the hearing officer may recommend to the Board that counsel be appointed based on the following considerations:
 - 1. That the parolee has made a timely and colorable claim that he has not committed the alleged violation of the conditions upon which he is at liberty.
 - 2. Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present.

(Rule 1100—1—1—.13, continued)

3. In doubtful cases, the Board will consider whether the parolee appears to be capable of speaking effectively for himself/herself.
- (g) In every case in which a request for counsel at a preliminary hearing is denied, the grounds for such refusal shall be stated succinctly in writing by the hearing officer or Board.
- (h) In every case in which a request for counsel at a preliminary hearing is not made, the hearing officer or a parole officer shall have the parolee sign a statement that he has been fully informed of his/her ability to request that he/she be appointed counsel to represent him/her and that he or she has decided not to seek appointed representation.
- (i) Nothing in this rule shall be construed to prevent the waiver of the right to a preliminary hearing and the decision not to request counsel at the preliminary hearing from appearing on the same document.
- (j) At the preliminary hearing, the parolee shall have the right to:
 1. Appear at the hearing and speak in his/her own behalf.
 2. Produce documents, letters, and individuals relevant to the violation(s) alleged; and
 3. Confront and cross-examine persons who have given adverse information upon which his parole revocation is to be based, unless the hearing officer finds good cause exists to disallow such cross-examination and confrontation.
- (k) The hearing officer shall conduct the hearing informally including the presentation of the documents or evidence in support of parole violation and the parolee's responses to such evidence. Based on the information presented at the hearing, such officer shall determine whether probable cause exists to believe that the parolee violated the conditions of his/her parole in an important respect.
- (l) if the hearing officer determines it is necessary or the parolee requests that any witnesses be subpoenaed, such officer shall employ the following procedure:
 1. If the witnesses are requested by the parolee, such parolee or his/her attorney shall submit a written statement, as well in advance of the scheduled hearing as possible, of the names of the persons requested as well as a brief statement of why their testimony is relevant. The statement requesting witnesses shall be forwarded to the regional director who shall review the request(s) and issue subpoenas for necessary witnesses.
 2. If the witnesses are requested by the state, the person representing the state shall comply with the same procedure set out in subpart (1) above but the request shall be sent directly to the regional director.
 3. Failure to comply with this procedure by the parties shall be sufficient grounds for denial of a subpoena request. If the parolee is not represented by an attorney, the subpoenas may be served by a parole officer or sent by certified mail.

(Rule 1100—1—1—.13, continued)

- (m) At the preliminary hearing, the hearing examiner shall select one of the following alternative decisions:
 - 1. no probable cause found, and the parolee shall be returned to supervision and the violation warrant withdrawn;
 - 2. probable cause found and the parolee shall be returned to the designated state prison under the violation warrant to await a final parole revocation hearing before the Board;
 - (n) The supervising officer may appeal the decision to dismiss the parole violation warrant by refile a violation report with the Director of Parole Field Services within three (3) working days. The parole officer must state the basis for the appeal. If the Director of Parole Field Services agrees that there is a board member for review. After reviewing the tape of the hearing and report, the board member will decide whether a new warrant will be issued. This decision shall be made within fifteen (15) working days of the hearing.
- (6) Declaration of Delinquency.
- (a) A declaration of delinquency may be issued by the Director of Parole Field Services in revocation proceedings to suspend such credit toward the service of the parolee's sentence. Such declaration may be made by the Director in any case when a parole violation warrant is issued.
 - (b) Except when a parolee is declared to be in a delinquent status, the time he/she is on parole is credited toward the service of his/her sentence unless it is taken by the Board after a revocation of parole.
 - (c) If delinquency is declared, the parolee stops earning credit for the service of his/her sentence from the date of declaration until the parole violation warrant is served and the parolee is housed in a correctional facility in Tennessee. Parolees taken into custody in another state will remain in delinquent status from the declaration of delinquency until they are returned to a Tennessee correctional facility or until delinquency is removed by the Board.
 - (d) During the revocation process the Board may consider an alleged violation and determine either that parole should not be revoked or that mitigating or compelling circumstances exist for the violation. The Board may then "take" or "grant" the delinquent time. Taking delinquent time requires that the parolee lose credit toward service of sentence. The Board may take all of the delinquent time or some lesser amount of time, which is set by the Board. Granting the delinquent time restores all of the parolee's credit toward service of sentence as though delinquency had never been declared.
- (7) Notice of Final Parole Revocation Hearing.
- (a) Prior to the revocation hearing, the parolee shall be notified in writing of the following:
 - 1. The date, time and location of the hearing;
 - 2. That the parolee has the right to appear in person and present such evidence as he/she desires;

(Rule 1100—1—1—.13, continued)

3. That he/she has the right to confront and cross-examine any adverse witnesses, unless good cause can be shown for refusing confrontation and cross-examination such as a significant potential for harm if identities are revealed; and
 4. That the parolee has the right to request that counsel be appointed to represent him/her at the final revocation hearing.
- (b) Any request for counsel shall be submitted to the Board in writing prior to the date such hearing is scheduled. Any requests to have witnesses subpoenaed shall be made in accordance with the procedure set out in subsection (5)(1) of this rule.
- (8) Continuance of Final Revocation Hearing.
- (a) Following a finding of probable cause at the preliminary hearing, the Board shall schedule a final revocation hearing as promptly as possible to consider the alleged violation(s) of parole.
 - (b) On its own motion, the Board may continue the final revocation hearing in order to secure more or necessary evidence or witnesses at the hearing, or to secure counsel to represent the parolee.
 - (c) The parolee may request in writing that the final revocation hearing be postponed. In all such situations, the parolee shall execute a written extension request setting forth the reasons why he desires such hearing date be extended. The Board may either accept or deny the parolee's request for an extension of time.
- (9) Final Revocation Hearing.
- (a) At the final revocation hearing the parolee shall have the right to appear and be heard in person and to present witnesses and documentary evidence.
 - (b) The parolee shall have the right to confront and cross-examine adverse witnesses, unless the Board specifically finds good cause for not allowing such confrontation and cross-examination.
 - (c) The parolee may request that he/she be appointed counsel to represent him/her. If the parolee has made such a request, the Board, in its discretion, may provide counsel based on the following considerations:
 1. That the parolee has made a timely and colorable claim that he/she has committed the alleged violation of the conditions upon which he/she is at liberty.
 2. Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present.
 3. In doubtful cases, the Board will consider whether the parolee appears to be capable of speaking effectively for himself/herself.
 - (d) In every case in which a request for counsel at a final revocation hearing is refused, the grounds for such refusal shall be stated succinctly in the record in writing.

(Rule 1100—1—1—.13, continued)

- (e) In every case in which a request for counsel at a final revocation hearing is not made, the Board shall have the parolee sign a statement that he/she has been fully informed of his/her ability to request that he/she be appointed counsel to represent him/her and that he/she has decided not to seek appointed representation.
 - (f) At the final revocation hearing, the Board will initially determine whether the alleged violation of parole is supported by preponderance of the evidence. In all cases the burden shall be on the state to establish that a violation occurred.
 - (g) If the Board determines that a parole violation occurred, or if the parolee admits to a violation, the Board shall next consider whether such grant of parole should be revoked for the violation.
 - (h) In all cases, including those situations in which the parolee has been convicted of a new offense, the Board shall consider any mitigating factors advanced by the parolee which suggest that the violation of parole does not warrant revocation.
 - (i) All parole revocation hearings shall be conducted in a manner as informal as is consistent with due process and the technical rules of evidence shall not apply to such hearings.
 - (j) All evidence upon which the finding of a parole violation may be based shall be disclosed to the parolee at the revocation hearing unless it has been declared confidential by the Board.
 - (k) Nothing in this subsection shall be construed to prevent the Board from disclosing documentary evidence by reading or summarizing the appropriate document for the parolee.
 - (l) If the Board sustains the violation and decides to revoke parole, the parolee shall be returned to confinement to serve the remaining portion of his/her sentence or such part as the Board directs. The time an inmate spent on parole shall be considered as service of the sentence unless the Board determines to take all or part of such time from the inmate.
 - (m) If the Board finds that the parolee did not commit the alleged violation or, if he/she did, finds that mitigating factors dictate the revocation is not appropriate, the parolee shall be allowed to resume the conditions of his/her parole status.
- (10) Felony committed While on Parole.
- (a) If a person is convicted in this state of a felony committed while on parole from a prison or workhouse in this state, he/she shall serve the remainder of his sentence under which was granted, or such part of that sentence as the Board may determine before he/she commences serving the sentence fixed for the crime committed while on parole.
 - (b) If a person on parole from a prison, workhouse or jail in this state is convicted of a crime under the law of another state or county which, if committed in this state, would be a felony, the Director of Paroles in this state shall seek to return such resident to this state through the terms of the interstate compact. If such resident is returned, the Board shall require that he serve the portion remaining of his/her maximum term of sentence or such part of that term as the Board may determine.

(Rule 1100—1—1—.13, continued)

- (c) The Board, at its discretion, may recommend to the Commissioner of Correction, the removal of all or any part thereof of the good and honor time and incentive time such inmate accrued on the sentence under which he/she was paroled. The final decision relative to whether any or all of such time credits will be removed shall be made by the Commissioner of Correction.

Authority: T.C.A. §§40—28—104, 40—28—106, 40—28—120, , 40—28—121, 40—28—122, 40—28—123 and 40—35—504. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

1100—1—1—.14 CONFIDENTIALITY OF PAROLE AND CLEMENCY RECORDS.

(1) Confidential Information.

- (a) The following information is considered confidential by the Board and will not be released unless listed as an exception under rule 1100—1—1—.14(4).
 1. Information contained in Board files that is produced, supplied or generated by other agencies. Individuals making inquiry of such information shall be informed whether such information is contained in Board files and, if so, directed to the controlling agency.
 2. Psychological evaluations provided, however, that such may be released to mental health officials who are treating the inmate/parolee if a release of information form signed by the inmate/parolee is presented with the request.
 3. Facts-of-the Offense Report
 4. Medical Records
 5. Parolees' home and work addresses and telephone numbers
 6. Parole Officers' opinions and statements recorded in the case file.
 7. Written clemency recommendations to the Governor.
 8. Statements in opposition of a parolee by victims, families of victims, families of inmates; private citizens who request confidentiality; and public officials who request confidentiality.
 9. Other information, the release of which the Board specifically finds would be a serious safety risk to the public, staff, parolee or inmate.
 10. Other information, the release of which the Board specifically finds would be a serious safety risk to the public, staff, parolee or inmate.

(2) Information Available for Release.

- (a) The following information may be released upon a verbal or written request indicating the name of the individual making the request, date of request, and the specific information requested:
 1. hearing and decision-making policy and procedures
 2. whether an inmate is being considered for parole or clemency

(Rule 1100—1—1—14, continued)

3. whether parole or clemency has been granted or denied
 4. effective date for parole
 5. statements in support of a parole
 6. statements in opposition of a parole which do not fall within the purview of (1)(a)(9).
 7. clemency applications and supporting documentation
 8. date, time and location of hearings
 9. parole certificates
 10. reasons for the Board decisions listed on Notice of Board Action
 11. social security numbers may be released to employers
- (b) Requests for information from field supervision files shall be directed to the Regional Director or his/her designee. The Regional Director or his/her designee will review the records and release information available under rule 1100—1—1—14(2)(a).
- (3) Any person may make a written request to the Board the release of any other information. The Board shall review such request and determine whether or not such information may be released.
- (4) Requests from Law Enforcement Officials. Law Enforcement officials who are conducting active investigations shall be provided information as necessary to assists in their investigations. Upon verification of the identity of the requesting official the following information may be released:
- (a) parolee's aliases
 - (b) parolee's M.O. (modus operandi or mode of operation)
 - (c) parolee's address
 - (d) parolee's place of employment
 - (e) parolee's photographs and fingerprints
 - (f) parolee's social security number
 - (g) parolee's telephone number
 - (h) facts-of-the-offense reports
 - (i) whether a Board of Parolee's warrant has been issued and a parolee has been arrested on a Board of Paroles warrant
 - (j) violation reports
 - (k) information on assets of persons currently or previously on parole who owe court fines

(Rule 1100—1—1—.14, continued)

Other information may be released to Law Enforcement Officials upon written request, subject to Board approval unless listed as an exception under rule 1100—1—1—.14(1)(a).

Authority: T.C.A. §§40—28—104 and 40—28—119. **Administrative History:** Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990.

RULE 11—1—1—.15 DUTIES AND PROCEDURES OF BOARD IN EXECUTIVE CLEMENCY MATTERS.

- (1) The Board shall, upon the request of the Governor, consider and make nonbinding recommendations concerning all requests for commutations or pardons. Such recommendations shall be made according to the following procedures:

- (a) Beginning Steps of Clemency Procedure.

1. Upon receipt of a request for an inmate or his/her attorney for executive clemency consideration, the Board shall respond by sending to the individual making the request an executive clemency application with a cover letter explaining the application procedure.
2. If the Board received a request for clemency on behalf of an individual by a third party who is not the individual's attorney, the Board shall respond and advise the third party that the person for whom clemency is requested must apply directly to the Board unless that person lacks the competency to apply in his/her own behalf.
3. Where a request for clemency is referred to the Board from the Governor's office, the Department of Correction or other agency, such request shall be handled in the same manner as if the request had been initially addressed to the Board.

- (b) Pardon Requests.

1. An application for a pardon must be accompanied by information and evidence sufficient to enable the Board to determine whether the applicant is entitled to consideration for a pardon under the Governor's guidelines. If no such information is included in the application or furnished to the Board, the applicant will be advised that the application can not be processed further until such information is received.
2. The Board shall review the application and supporting information and determine whether the applicant should be scheduled for a hearing. The Board's files shall reflect the action of the Board in scheduling the case for hearing.
3. If the applicant is determined not to be eligible for consideration he/she shall be advised of this and of the reasons he/she is not eligible for consideration.

- (c) Commutation Requests.

1. The Board shall review the application and any supporting information and determine whether the applicant falls within the Governor's guidelines and the Board's screening factors, and whether the applicant should be scheduled for a hearing. The Board's files shall reflect the action of the Board in scheduling the case for hearing.

(Rule 1100—1—1—.15, continued)

2. If the applicant does not fall within the Governor's criteria, he/she shall be advised as to why he/she is not eligible for consideration and will not be scheduled for a hearing. He/She shall be advised as to the date on which he/she will be eligible and may reapply for consideration, provided that none of the Board's screening factors are amended by the Governor to prevent such consideration.

(d) General Procedure for Clemency Requests and Hearings.

1. All requests for executive clemency shall be responded to in a timely manner. After the application is received, the applicant and his/her attorney shall be advised as to whether the case is to be scheduled for a hearing and the date, time and place of any hearing. All hearings shall be held promptly following the notice to the applicant and his attorney, unless they are continued, in the Board's discretion, at the request of the applicant or his/her attorney, or pending receipt by the Board of essential information. The notice shall advise the applicant that he/she is entitled to appear at the hearing and to present witnesses and other evidence on his behalf. Such notice shall also include a description of the type of evidence considered by the Board.
2. At the same time that notice is sent to an applicant and his/her attorney, the appropriate judge and district attorney general shall be notified that the case has been set for hearing and the date, time and place of hearing. The notice to the judge and district attorney shall indicate that the Board solicits and welcomes their view and recommendations concerning clemency for the applicant.
3. The Board's staff may compile any or all of the following information for the Board's consideration at the hearing:
 - (i) a reclassification/parole summary completed by the institutional staff, if the applicant is an inmate;
 - (ii) information about the facts and circumstances surrounding the offense and conviction. Such information shall be obtained through investigation conducted by a parole officer or other individual designated by the Board;
 - (iii) a psychiatric/psychological evaluation if the applicant is an individual convicted of a sexual offense or sex related crime;
 - (iv) information about medical, mental and/or family problems or needs obtained through investigation by a parole officer or other individual designated by the Board, if appropriate;
 - (v) the application, original request, and supporting evidence, and any correspondence in the Board's file concerning the application.
4. If the applicant is requesting a pardon, the following additional information shall be obtained:
 - (i) information obtained for FBI and local records checks;

(Rule 1100—1—1—.15, continued)

- (ii) information regarding recent social history and reputation in the community; and
 - (iii) information verifying reasons for pardon request.
- 5. Although the Board's staff obtains the above information in order that clemency hearings not be completely ex parte in nature, the burden remains on the applicant to establish that he/she is entitled to clemency.
- 6. At a clemency hearing the Board shall consider, but is not limited to, the following factors:
 - (i) the nature of the crime and its severity;
 - (ii) the applicant's institutional record;
 - (iii) the applicant's previous criminal record, if any;
 - (iv) the views of the appropriate trial judge and the district attorney general who prosecuted the case;
 - (v) the sentences, ages and comparative degree of guilt of co-defendants or others involved in the applicant's offense;
 - (vi) the applicant's circumstances if returned to the community;
 - (vii) any mitigating circumstances surrounding the offense;
 - (viii) the views of the community, victims of the crime or their families, institutional staff, parole officers or other interested parties; and
 - (ix) medical and/or psychiatric evaluation when applicable.
- 7. The Board will inform the applicant and/or his/her attorney of its recommendation at the end of the hearing or in its discretion will take the case under advisement. In either event, the Board shall advise the applicant that its recommendation to the Governor is non-binding and that the Governor will review any recommendation of the Board.
- 8. The Chairman shall designate one member of the Board to write a report to the Governor concerning the case. The report shall include:
 - (i) a brief statement of the reasons for the recommendation;
 - (ii) the complete file;
 - (iii) the views of the various Board Members, if the recommendation is not unanimous; and
 - (iv) the specifics of the recommendation-whether it is a positive or negative one and if a positive recommendation, any terms and conditions recommended by the Board.

(Rule 1100—1—1—.15, continued)

- (e) Emergency Medical Clemency Requests. In a small percentage of cases, it is necessary and appropriate that the Board consider requests by individuals recommended for clemency by the Department of Correction's medical staff. At times these individuals may lack competency to apply on their own behalf and the request may be made by the medical staff. These requests are made in unusual or emergency medical situations and may require immediate action by the Board. In such cases, a complete medical report and a detailed statement of the emergency situation will accompany the Board's report to the Governor.
- (f) As soon as practicable after the Board's clemency recommendation, it shall forward or cause to be forwarded to the appropriate standing committees of the general assembly, designated by the speaker of the senate and the speaker of the house or representative, a written list of the names of all persons receiving both favorable and unfavorable recommendations.
- (g) The list required by subsection (f) of this note shall also be furnished to the appropriate attorney general in whose district any such person was convicted.
- (h) Board Supervision of Commutes.
 - (i) When the Governor of the State of Tennessee commutes a resident's sentence and makes supervision by the Board a condition of such commutation, the Board shall assign the commuttee a parole officer in the same manner as if the resident had been released on parole.
 - (ii) If the parole officer supervising such commuttee has reasonable cause to believe such person has violated the conditions of his commutation, he/she shall detail the circumstances of the alleged violation in the form of an affidavit and transmit such affidavit to the Director of Paroles. In no event shall the parole officer arrest, detain or cause the arrest or detention of a commuttee unless done on the basis of a warrant from the Governor.
 - (iii) The Director shall review and shall immediately transmit in appropriate cases affidavits received pursuant to this subsection to the office of the Governor.
 - (iv) At the request of the Governor, the Board shall conduct a commutation revocation hearing to determine if a commuttee violate the conditions of his/her commutation. The Board will conduct such hearings in the same manner and use the same procedures as parole violation hearings are conducted pursuant to rule 1100—1—1—.13(9)(c), (d) and (e).
 - (v) At the conclusion of the hearing the Board shall transmit the record of such hearing, together with the Board's non-binding findings and recommendations concerning the alleged commutation violation, to the Governor.

Authority: T.C.A. §§40—27—101, 40—27—102, 40—27—104, 40—28—104, 40—28—107 and 40—28—126.
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